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SUPREME COURT OF THE UNITED STATES
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Harry L. Reynolds, Jr.,

Petitioner,

vs.

International Amateur Athletic Federation, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF THE AMICI CURIAE 1

ISSUE PRESENTED 4

REASONS FOR GRANTING THE WRIT 4

I. THE ISSUE OF PERSONAL JURISDICTION PRESENTED IN THIS CASE HAS VAST IMPLICATIONS FOR THE ABILITY OF STATES TO CONTINUE TO PROTECT AND VINDICATE THE RIGHTS OF THEIR CITIZENS AGAINST INTERNATIONAL TORTFEASORS WHOSE WRONGDOING AFFECTS THE PERSONAL AND PROFESSIONAL LIVES OF STATE CITIZENS 5

A. The Court's Relaxation of Jurisdictional Standards in the Face of the Increasing Internationalization of the American Economy and of American Life 5

B. The Need for More Well-Defined Standards of Personal Jurisdiction Outside the Specific Context of Commercial Transactions Between an Individual and a For-Profit Business Entity 11

C. The Continuum Between *Calder* and *Keeton*, at One End, and *World-Wide Volkswagen* and *Asahi*, at the Other End, Should Be Further Defined 14

II. THE RULING BELOW EXEMPLIFIES A DEEP CONFLICT WITHIN AND AMONG THE FEDERAL CIRCUIT COURTS AND STATE HIGH COURTS ABOUT THE PROPER INTERPRETATION OF THE COURT'S DECISIONS IN *CALDER v. JONES* AND *KEETON* v. HUSTLER MAGAZINE, INC. . . . 19

A. The Decision Below Exemplifies a Continuing Confict Among the Federal Circuit Courts 19

B. This Circuit Split Is Exacerbated by Numerous Conflicting Decisions by State High Courts 24

C. The General Split in the Courts Is Heightened for the State of Ohio and Its Citizens, in Particular, by a Direct Conflict Here Between the Sixth Circuit and the Ohio Supreme Court . . . 26

CONCLUSION 28

TABLE OF AUTHORITIES

CASES **Page**

Asahi Metal Indus. Co. v. Superior Ct.,
480 U.S. 102 (1987) 10, 12, 15
Brainerd v. Governors of the Univ. of Alberta,
873 F.2d 1257 (9th Cir. 1989) 20, 23
Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 3, 26
Burt v. Board of Regents of the Univ. of Nebraska,
757 F.2d 242 (10th Cir. 1985), *vacated on other grounds*, 475 U.S. 1063 (1986) 21
Calder v. Jones, 465 U.S. 783 (1984) . . . . . *passim*
Core-Vent Corp. v. Nobel Indus. AB,
11 F.3d 1482 (9th Cir. 1984) 22
Fallang v. Hickey,
532 N.E.2d 117 (Ohio 1988) 26, 27
First Am. First, Inc. v. National Ass'n of Bank Women,
802 F.2d 1511 (4th Cir. 1986) 20
Hanson v. Denckla, 357 U.S. 235 (1958) . . . . . *passim*
Helicoptoros Nacionales de Columbia, S.A. v. Hall,
466 U.S. 408 (1984) 10
Hugel v. McNell, 886 F.2d 1 (1st Cir. 1989),
cert. denied, 494 U.S. 1079 (1990) 3, 19, 27
International Shoe Co. v. Washington,
326 U.S. 310 (1945) 8, 9, 15
Keeton v. Hustler Magazine, Inc.,
465 U.S. 770 (1984) . . . . . *passim*
Krantz v. Air Line Pilots Ass'n Int'l,
427 S.E.2d 326 (Va. 1993) 24
Leeper v. Leeper, 319 A.2d 626 (N.H. 1974) 2
Madara v. Hall, 916 F.2d 1510 (11th Cir. 1990) 22
McGee v. International Life Ins Co.,
355 U.S. 220 (1957) 1, 6, 8

Milliken v. Meyer, 311 U.S. 457 (1940) 15
Pennoyer v. Neff, 95 U.S. 714 (1877) 9
Shaffer v. Heitner, 433 U.S. 186 (1977) 15, 17
Shaw v. North Am. Title Co.,
876 P.2d 1291 (Haw. 1994) 25
Ticketmaster-New York, Inc. v. Alioto,
26 F.3d 201 (1st Cir. 1994) 23
Wilson v. Belin, 20 F.3d 644 (5th Cir. 1994) 23
World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) . . . . . *passim*

STATUTES & RULES

Ohio Rev. Code §2307.382(A)(6) 14

Ohio R. Civ. P. 4.3(A)(3) 14

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV . . . . . *passim*

MISCELLANEOUS

Friedman, *The World, When Money Talks, Governments Listen,* New York Times, July 24, 1994, §4, at 3 7

McGourty, *Highway to the Global Netropolis*,
Daily Telegraph, May 4, 1994, at 20 7

MISCELLANEOUS (cont'd.) **Page**

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Restatement (Second) of Conflict of Laws (1971) 2

Rheingold, *Networking Brings Power to the People*, Daily Telegraph, May 11, 1994, at 16 7

Sports People: Inquiry on Connors, New York Times, Feb. 28, 1986, at A24 7

INTEREST OF THE AMICI CURIAE

The State "has a manifest interest in providing effective means of redress for its residents." *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957). This case is illustrative; here the trial court awarded Petitioner $27,356,008 in compensatory and punitive damages based on Respondent's malicious defamation and other intentional tortious conduct that was undertaken "with ill will and a spirit of revenge toward [Petitioner]." Pet. App. 72a-73a; *see also id.* 66a-67a. The ruling below, holding that personal jurisdiction was improper in these circumstances, would severely undercut the ability of the States to provide an effective means of redress for residents who are victimized by international tortfeasors. The amici States and their citizens thus are directly affected by this ruling.

In this case, an international association exercises pervasive control over the professional life of a state resident. That association committed an intentional tort against Petitioner by deliberately distributing a defamatory press release through the international media that was calculated to cause and did cause his personal and professional ruin by devastating his reputation in the forum State, where he resides. By holding that the association cannot be haled into court to answer for its wrongdoing, the Sixth Circuit's ruling would remove the only effective means by which the States can protect their citizens against intentional wrongdoing by such international entities.

The "manifest interest" of the States in protecting their citizens is clearly present in tort cases:

> "'A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to

> afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.'"

Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 778 (1984) (quoting *Leeper v. Leeper*, 319 A.2d 626, 629 (N.H. 1974), which was quoting *Restatement (Second) of Conflict of Laws* §36, cmt. c (1971)). The State's interest is particularly strong when the case involves intentional torts such as libel:

> This interest extends to libel actions .... False statements of fact harm both the subject of the falsehood *and* the readers of the statement. [The State] may rightly employ its libel laws to discourage the deception of its citizens. There is "no constitutional value in false statements of fact."

Keeton, 465 U.S. at 776 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974)) (emphasis in original).

The strength of the State's interest is clear enough when the plaintiff, as in this case, is a state resident. In *Keeton*, moreover, the Court held that the State's interest in permitting redress through libel actions is especially strong -- so strong that it may exercise jurisdiction over a libel defendant even when the plaintiff is a nonresident. *Id.* at 776-777.

The States also have an interest in other factors in the determination of personal jurisdiction:

> [C]ourts in "appropriate case[s]" may evaluate ... "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the

> interstate judicial system's interest in obtaining the most efficient resolution of the controversies," and the "shared interest of several States in furthering substantive social policies."

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). The States therefore have a shared interest in asserting personal jurisdiction in order to further their substantive social policies and to obtain the most efficient resolution of controversies.

Of course, the factors of interest to the plaintiff and the States must be balanced against the burden imposed on the defendant by defending a case in a foreign forum. The States have no wish, and no constitutional authority, to assert jurisdiction that would not comport with "fair play and substantial justice," as required by the Due Process Clause. Nonetheless, in cases where egregious intentional torts have been perpetrated against state citizens on an international scale, the recognized interests of the plaintiffs and their States are particularly strong.

It has been said that personal jurisdiction is "a very real problem which cuts to the heart of a federal court's ability to practice its trade." *Hugel v. McNell*, 886 F.2d 1, 2 (1st Cir. 1989), *cert. denied*, 494 U.S. 1079 (1990). The same is true, of course, of the state courts, but the amici States would also contend that personal jurisdiction cuts even deeper than this. The ability to assert personal jurisdiction over defendants permits each State to secure redress for its citizens against wrongdoing, and thereby to enforce principles of the common law that have long served to create and protect an orderly society within each State. Without the ability to bring defendants to answer for injuries done to their

citizens, the States would have lost an important piece of their traditional authority to govern. For this reason, it is vitally important for each State to be able to exercise personal jurisdiction over international associations that exert pervasive influence and control over state citizens in the increasingly internationalized economic and social life of our Nation.

QUESTION PRESENTED

Whether it comports with "traditional notions of fair play and substantial justice" under the Due Process Clause for a State to exercise personal jurisdiction over an international association that wields virtually absolute power over the professional conduct of a plaintiff state citizen, when the association deliberately directs tortious acts at the plaintiff that predictably cause him devastating financial and personal injury in the forum State.

REASONS FOR GRANTING THE WRIT

The court below concluded that the Due Process Clause does not permit an international association to be haled into court in the State where the plaintiff resides to be made to answer for its intentional tortious conduct. It reached this holding without regard to the important facts that the association controls nearly every aspect of the plaintiff's professional life, and that it purposely directed injurious conduct towards the plaintiff, the brunt of which was felt within the forum State.

The ruling below runs contrary to this Court's precedents. It also exemplifies a substantial conflict among and within the Federal Courts of Appeals and the high courts of the States. That conflict is felt especially sharply by the State of Ohio and its citizens, for the Sixth Circuit and the

Ohio Supreme Court have now rendered diametrically opposed rulings on the issue of personal jurisdiction raised here. As a general matter, moreover, if the ruling below is allowed to stand, it will allow international organizations located offshore, which increasingly exercise pervasive control over the professional and personal lives of American citizens, deliberately to harm those citizens without fearing any possibility of redress in the Federal and state courts.

I. THE ISSUE OF PERSONAL JURISDICTION PRESENTED IN THIS CASE HAS VAST IMPLICATIONS FOR THE ABILITY OF STATES TO CONTINUE TO PROTECT AND VINDICATE THE RIGHTS OF THEIR CITIZENS AGAINST INTERNATIONAL TORTFEASORS WHOSE WRONGDOING AFFECTS THE PERSONAL AND PROFESSIONAL LIVES OF STATE CITIZENS.

A. The Court's Relaxation of Jurisdictional Standards in the Face of the Increasing Internationalization of the American Economy and of American Life.

This case presents unique facts regarding international entities that have profound effects on the lives of State citizens. Although Petitioner's dispute is with an international sports association, the growing proliferation of similar international associations, in various fields, imbues this case with significance that extends well beyond the arena of amateur sports.

This Court has observed that in the context of personal jurisdiction, the limits imposed upon state jurisdiction by the Due Process Clause have been "substantially relaxed over the years." *World-Wide*

Volkswagen, 444 U.S. at 293-94. This appropriate trend is "largely attributable to a fundamental transformation in the American economy." *Id.* The trend was first noted in *McGee*:

> [A] trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

355 U.S. at 222. In *World-Wide Volkswagen*, the Court pointed out that "[t]he historical developments noted in *McGee*, of course, have only accelerated in the generation since that case was decided." *World-Wide Volkswagen*, 444 U.S. at 294.

This case presents the Court with the opportunity to consider and address the next development in this apparently inexorable trend, which is the growing internationalization of the American economy, and indeed of the world economy. It has been widely remarked in the last decade that Americans have come more and more to live and work in a truly global frame of reference. Virtually all of the products produced by American companies or consumed by American

citizens are now, either in part or in full, international in character. Numerous articles in news and business publications discuss and ponder the new "internationalization" of American business and American economic life. *See, e.g.*, Friedman, *The World, When Money Talks, Governments Listen*, New York Times, July 24, 1994, §4, at 3.

In fact, the economy is but one aspect of American life that is undergoing a global transformation. Much of modern scientific research is, and indeed must be, conducted within the framework of the international scientific community. *See, e.g.*, Organization for Economic Co-Operation and Development, *The Dawn of Global Scientific Co-Operation: Interview with Senior Astronomer Francoise Prederie*, OECD Observer, Apr. 1994, at 4. International computer networks are rapidly changing the ways that people all over the world are able to interrelate. In particular, recent developments in computer and broadcast technology have entirely transformed the nature and reach of the international media -- the potent mechanism that Respondents deliberately utilized in this case to defame Petitioner. *See, e.g.*, McGourty, *Highway to the Global Netropolis*, Daily Telegraph, May 4, 1994, at 20; Rheingold, *Networking Brings Power to the People*, Daily Telegraph, May 11, 1994, at 16.

As this case clearly illustrates, many sports and other contests have also become predominantly international in character. Athletes and other contestants are now being controlled to an increasing degree by international organizations. *See, e.g., Sports People: Inquiry on Connors*, New York Times, Feb. 28, 1986, at A24 (Men's International Professional Tennis Council fined American tennis player for the "major offense" of "aggravated behavior," which was his decision to forfeit a match). In the

same manner, cultural life, including many of the performing arts, have been international in character for many years. More generally, international organizations and associations now set standards and dictate procedures for American citizens in virtually every arena of life. As this case also illustrates, such entities have the power to wield enormous influence over American citizens, and can cause them enormous harm, especially in a world marked by instantaneous communications that can saturate the globe. At the same time, these same entities generally derive great benefit from their American alliances.

Under the current understanding of the Due Process Clause, a State may exercise jurisdiction over the person of a nonresident defendant when there exist "minimum contacts" between the defendant and the forum State. The requirement of minimum contacts is, in part, imposed to protect defendants from inconvenient litigation. The protection from inconvenient litigation is generally described in terms of reasonableness; the contacts must be such that the maintenance of a suit in the forum State "does not offend 'traditional notions of fair play and substantial justice.'" *World-Wide Volkswagen*, 444 U.S. at 291-92 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). Nonetheless, the defendant's burden of having to defend a suit in a foreign jurisdiction will be considered in light of several countervailing factors, which include any benefits the defendant derives from contacts with the forum State as well as the State's interests in adjudicating the dispute, in affording relief to state residents, and in furthering its own substantive social policies. *World-Wide Volkswagen*, 444 U.S. at 292.

This Court, as long ago as *McGee* and *Hanson v. Denckla*, 357 U.S. 235, 250-51 (1958), recognized that improvements in modern transportation and communication

have made it less burdensome for a party located outside a State to defend itself:

> As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff*, 95 U.S. 714, to the flexible standard of *International Shoe Co. v. Washington*, 326 U.S. 310.

Hanson, 357 U.S. at 250-51; *see also World-Wide Volkswagen*, 444 U.S. at 294. Because of the increased internationalization of American institutions and American life, this Court should consider in this case whether the limits imposed on State jurisdiction should be similarly relaxed with respect to foreign defendants who derive substantial benefits from their contacts with the forum State and who may direct intentional conduct toward its residents.

The trend in the Court's decisions toward more elaxed standards is, however, finite and controlled by due process:

> [I]t is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts .... Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of

> territorial limitations on the power of the respective States.

Hanson, 357 U.S. at 250-51 (citation omitted); *see also World-Wide Volkswagen*, 444 U.S. at 294. The Court has held that even if the forum State has a strong interest in applying its law to the controversy, "the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Id.* (citing *Hanson*, 357 U.S. at 251, 254).

The issue before the Court in this case is to determine how far this trend in its decisions should be reflected in cases that extend into the international sphere, while still comporting with the constitutional principles of due process. There have, of course, been prior cases in which the Court has considered the issue of personal jurisdiction in an international context. *See, e.g., Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102 (1987); *Helicoptoros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984). Those cases, however, have generally concerned commercial matters, rather than intentional torts, and have addressed corporate parties whose international activities are felt in discrete commercial transactions rather than in exerting powers of direct governance over American citizens. In a sense, this case is one of first impression because it presents the Court with a situation in which an international association sits offshore and wields almost absolute authority over a State citizen's ability to practice his profession, while deriving substantial benefits from the forum State and this country as a whole. It is simply not appropriate for such an entity to assert that the Due Process Clause allows it to commit intentional tortious acts against an American citizen without having its conduct subjected to scrutiny in an American court.

B. The Need for More Well-Defined Standards of Personal Jurisdiction Outside the Specific Context of Commercial Transactions Between an Individual and a For-Profit Business Entity.

This case also presents the Court with an opportunity to define more clearly the constitutional standards for asserting personal jurisdiction in a noncommercial setting. In virtually every personal jurisdiction case considered by this Court, and also by the lower courts, the jurisdictional issue was raised in situations where a for-profit business entity had engaged in a discrete commercial transaction. Even in the recent libel cases of *Keeton* and *Calder v. Jones*, 465 U.S. 783 (1984), the defendants were owners or employees of for-profit business enterprises in the information field, which had substantial commercial contacts with the forums involved through the marketing and circulation of their publications. In each case, the issue of personal jurisdiction turned, at least in part, on a careful analysis of the specific, for-profit activities engaged in by the defendant.

This case, by contrast, involves an international association organized as a non-profit entity. By definition, therefore, that entity has not derived profit from its transactions with Petitioner or from transactions that occurred in the forum state. This is not to say, as explained below, that Respondent International Amateur Athletic Federation (IAAF) has derived no benefit from its relationship with Petitioner or with Ohio and other States. To the contrary, Respondent IAAF has derived substantial economic and noneconomic benefits from the control it exercises over United States athletes, including Petitioner, and from the exposure and revenues it obtains by its use of the communications and broadcast media throughout this

country. The important point here, though, is that these benefits are not narrowly "commercial" in the sense that they do not derive from discrete commercial transactions or from the marketing of a specific product.[1]

In personal jurisdiction cases, a commercial entity is considered to be inconvenienced because of the expense and risk of litigating in a distant forum, which may seriously undermine its ability to do business at all. This consideration, at least in part, was decisive in the Court's decisions that jurisdiction was improper in *Asahi* and *World-Wide Volkswagen*. As the Court stated in *World-Wide Volkswagen*:

> When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," *Hanson v. Denckla*, 357 U.S. at 253, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigations by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.

444 U.S. at 297. The Court thus observed that the possibility of litigation is a recognized cost of doing business in a particular State, which necessitates that a corporation have "clear notice that it is subject to suit there." *Id.* Therefore, the Court reasoned, unless a commercial entity undertakes some affirmative act to subject itself to liability in

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[1] This is also not to say that the harm suffered by Petitioner from Respondents' intentional tortious conduct is anything other than economic in nature; Petitioner sustained and continues to sustain substantial economic injury in his State of residence from the defamation that Respondents deliberately directed at him.

a forum State, it would be unreasonable to expose it to liability there.

In situations that do not involve discrete commercial transactions, and particularly where the issue is raised by an international standard-setting organization, these concerns are more attenuated. An international non-profit association such as the IAAF is not "doing business," at least in the ordinary sense of the phrase, although it does derive substantial economic benefit from its operations. It will continue to set standards for athletes worldwide, regardless of the outcome of any lawsuit brought against it. In addition, it is clear that Respondent IAAF is well aware of its vulnerability to suit, for it has recently moved to Monaco for the purpose of better insulating its activites from judicial redress. *See* Pet. 27 n.16. It therefore can hardly be "unreasonable" or "unforeseen" for such an entity to be haled into court for committing an intentional tort against one of the athletes it purports to regulate and control.

By their very nature, the actions taken by international standard-setting associations are more intrusive into the lives of particular American citizens than the actions taken by commercial corporations located in other parts of the world. By purporting to set mandatory standards for athletes worldwide, for example, Respondent IAAF has taken affirmative action to impose its control upon the professional lives of all the athletes it regulates, many of whom are American citizens. Its control over their lives includes substantial influence over their personal and professional reputations by manipulation of the international communications and broadcast media. The actions of Respondent IAAF in this case thus will serve as a model for various other organizations that perform similar functions in other fields. If the ruling below is permitted to stand, then international standard-setting organizations will know for

certain that they can locate themselves offshore and act with complete impunity, all while wielding tremendous power over American citizens and obtaining substantial benefits from American corporate subsidies. Even when such an entity specifically aims its intentional wrongdoing at a particular American citizen in his State of residence, the citizen is helpless and the State is powerless to call the tortfeasor to account in any American court. *See* Pet. 23-28 & nn. 14 & 16.

Given the increasingly international character of American life at the end of the twentieth century, it is likely that the trend toward globalism in many fields will only accelerate more rapidly in the years ahead. The ruling below creates the potential for great harm to the States and their citizens in a variety of fields, without any realistic prospect of judicial redress. For this reason alone, the Court should grant certiorari in this case in order to define more clearly the standards for personal jurisdiction as applied to international entities such as the IAAF.

C. The Continuum Between *Calder* and *Keeton*, at One End, and *World-Wide Volkswagen* and *Asahi*, at the Other End, Should Be Further Defined.

In a diversity case in which personal jurisdiction is at issue, the court must first inquire whether the assertion of personal jurisdiction satisfies the law of the State in which the case is brought. *See, e.g.*, *Calder*, 465 U.S. at 786 n.5.[2] Most of the States confer jurisdiction that extends to the

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[2] There is no question in this case that the intentional tortious conduct engaged in by Respondents is encompassed within Ohio's assertion of its long-arm jurisdiction. *See* Ohio Rev. Code §2307.382(A)(6); Ohio R. Civ. P. 4.3(A)(3).

limits of due process, and therefore the determination usually turns solely on the proper application of the Due Process Clause. These requirements were summarized by the Court in *Calder*:

> The Due Process Clause of the Fourteenth Amendment to the United States Constitution permits personal jurisdiction over a defendant in any State with which the defendant has "certain minimum contacts ... such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

465 U.S. at 788. The Court has explored the contours of this "minimum contacts" test in a number of cases over the years. The cases have established a continuum of sorts, all with regard to the "relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977); *Calder*, 465 U.S. at 787. Specifically, this Court held in *World-Wide Volkswagen* that the defendant must "purposefully avail[] itself of the privilege of conducting activities within the forum State." 444 U.S. at 297; *see also Hanson*, 357 U.S. at 253. The proper interpretation and application of these concepts in different situations has been the crux of numerous cases, both in this Court and in the lower Federal and state courts.

This continuum has at one end the Court's decisions in *Asahi* and *World-Wide Volkswagen*; at the other end are *Calder* and *Keeton*. *Asahi* held that merely placing a product into the "stream of commerce" with the awareness that it could wind up in the forum State, without more, is "not an act of the defendant purposefully directed toward the forum

State." 480 U.S. at 112. Similarly, *World-Wide Volkswagen* held that where the plaintiff carries the defendant's product, even a product that is inherently mobile, into the forum State, the "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." 444 U.S. at 298 (quoting *Hanson*, 357 U.S. at 253). Thus, where contact between the defendant and the forum State is attributable to acts by others that were not directed by the defendant itself, the Due Process Clause would appear to provide that the defendant cannot be subject to suit in the forum State, at least in cases that do not involve intentional torts.

By contrast, *Calder* and *Keeton* held that when a party is charged with intentional tortious acts that are expressly aimed at the forum State, the party must "reasonably anticipate being haled into court there." *See, e.g.*, *Calder*, 465 U.S. at 790. Both *Calder* and *Keeton* were libel suits in which the defendants were publications (or their reporter employees) whose circulation included the forum State. The defendants were found to enjoy direct and substantial economic benefit from the forum State, and the Court therefore concluded that it was proper to emphasize the "effects" of their conduct in the forum State in determining whether they could be subject to suit there. *See Calder*, 465 U.S. at 788-89.

In this case, an international organization that does not itself own or control the national or international news media, nevertheless made deliberate use of those media to commit an intentional tortious act against Petitioner, the effects of which were calculated to be felt most directly in the forum State where he resides. Respondent IAAF does not directly control the media in the forum State. It does, however, obtain substantial economic benefit from the media

in the forum State in the form of increased exposure and broadcast revenues.[3] In this case, moreover, Respondent IAAF committed an intentional tort that was aimed specifically at Petitioner and was calculated to harm him in the forum State of Ohio and worldwide.

The Court has traditionally held that in judging minimum contacts, "a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Keeton*, 465 U.S. at 775 (quoting *Shaffer*, 433 U.S. at 204). The Court's opinions in both *Keeton* and *Calder* indicate that the relationship among the three entities is considered quite differently when an intentional tort is involved, rather than mere negligence, strict liability, or liability based on the terms of a contract. An intentional tort directed at a particular individual renders the connection between the defendant and the forum more substantial. *Keeton*, 465 U.S. at 775-776. The specific legal issue

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[3] At the same time, it must be understood that the IAAF obtains other substantial benefits from the forum State as well. For example, the IAAF benefits from the revenues it obtains from American companies, many of whom do business in the forum state, which take the form both of direct monetary subsidies and of broadcast revenue. *See* Pet. 4. Perhaps more importantly, the IAAF obtains the benefit of virtually complete control over all track-and-field athletes, including many American citizens and residents of the forum State, who wish to compete in the international arena. This control is exercised directly by declaring athletes ineligible to compete in international competitions for alleged violations of IAAF rules; it is also exercised indirectly by declaring athletes ineligible if they dare to compete against so-called "outlaw" athletes during a suspension. This case demonstrates both forms of control at work, since the IAAF enforced its invalid suspension of Petitioner by threatening to disqualify any American athlete who ran in a meet with him, and by pressuring meet directors into withdrawing invitations for Petitioner to compete in their meets. The American agent of the IAAF -- Respondent The Athletic Congress -- carried out the IAAF's dictates even to the point of defying controlling orders of the United States courts. *See* Pet. 12.

presented here is whether the commission of an intentional tort calculated to have its principal effects in the forum State, without the further connection of direct control over the media through which the tort is perpetrated, is enough to increase the connection between the defendant, the forum, and the litigation to provide the "minimum contacts" required by the Due Process Clause.

The Court addressed this issue in *Calder* in its analysis of whether personal jurisdiction could properly be exercised over the defendant employees of the defendant publication:

> Petitioners are correct that their contacts with California are not to be judged according to their employer's activities there. On the other hand, their status as employees does not somehow insulate them from jurisdiction.... In this case, petitioners are primary participants in an alleged wrongdoing intentionally directed at a California resident, and jurisdiction over them is proper on that basis.

465 U.S. at 790. Respondents, of course, are not employees of the publications that disseminated the defamatory statements here. On the other hand, Respondents were the "primary participants in an alleged wrongdoing intentionally directed at [an Ohio resident,]" and in accordance with *Calder*, "jurisdiction over them is proper on that basis." *Id.* As explained below, *see infra* Part II, most of the Federal and state courts that have considered the issue have interpreted *Calder* to indicate that it is the nature and effects of the tort, and not control of the medium, that determine whether personal jurisdiction is proper.

At a minimum, therefore, this case presents the Court with an opportune vehicle to clarify the import of the spectrum of decisions that have now applied the Due Process Clause to cases concerning personal jurisdiction over intentional tortfeasors.

II. THE RULING BELOW EXEMPLIFIES A DEEP CONFLICT WITHIN AND AMONG THE FEDERAL CIRCUIT COURTS AND STATE HIGH COURTS ABOUT THE PROPER INTERPRETATION OF THE COURT'S DECISIONS IN *CALDER v. JONES* AND *KEETON v. HUSTLER MAGAZINE, INC.*

A. The Decision Below Exemplifies a Continuing Confict Among the Federal Circuit Courts.

The decision of the court below conflicts with the decisions of several other Federal Courts of Appeals. For instance, in *Hugel v. McNell*, 886 F.2d 1 (1st Cir. 1989), *cert. denied*, 494 U.S. 1079 (1990), nonresident defendants made the supposedly defamatory allegation that the plaintiff had engaged in illegal securities activities. Although the plaintiff resided in New Hampshire, the allegations were made to *Washington Post* reporters. The *Post* printed a story that was eventually carried by different media in New Hampshire. The First Circuit determined that the nature of the intentional tort rendered the intervening actions of the reporters and editors of the *Washington Post* "irrelevant to the question of whether New Hampshire can exert personal jurisdiction over" the defendants. *Id.* at 5. The Court held that the defendants could reasonably expect to be haled into court in New Hampshire, and the assertion of jurisdiction satisfied due process. In this case, likewise, the intervening actions of the international media should be irrelevant to the

question of personal jurisdiction. Respondent IAAF, by intentionally defaming Petitioner, should reasonably expect to be haled into court in the State where Petitioner resides, and where the brunt of the blow would be felt from their intentional tortious conduct.

In *Brainerd v. Governors of the Univ. of Alberta*, 873 F.2d 1257 (9th Cir. 1989), the defendant, an official of a Canadian university, had a telephone conversation with an official of the Arizona university where the plaintiff was employed. During the telephone conversation, the defendant made allegedly defamatory statements about the plaintiff's integrity. The Ninth Circuit stated that it is the quality, and not the quantity, of the contacts between the defendant and the forum that determine personal jurisdiction. *Id.* at 1259. The court, citing *Calder*, held that even though the defendant did not initiate the contact, the defendant knew that the statements would cause harm in Arizona and thus had "not presented a compelling case that jurisdiction would be unreasonable." *Id.* The same is true in this case: Respondent IAAF knew and intended that its press release would cause harm in Ohio, where Petitioner resides, and worldwide. Respondents thus have not shown that jurisdiction would be unreasonable here.

First Am. First, Inc. v. National Ass'n of Bank Women, 802 F.2d 1511 (4th Cir. 1986), also runs contrary to the ruling below. That case involved a national membership organization (National Association of Bank Women or NABW), which had no business address of any kind in Virginia, and distributed all its publications and other services from its home State of Illinois. Plaintiff, a Virginia-based travel agency, solicited business from NABW's members, in competition with the Illinois-based travel agency approved by NABW. The executive director of NABW wrote allegedly defamatory letters to NABW members

nationwide about the plaintiff. The Fourth Circuit, citing *Calder*, held that "jurisdiction over these defendants can be exercised constitutionally" in Virginia. The Court stated, as the basis for its holding, that "[t]he allegedly defamatory letters, though written in and mailed from Illinois and distributed throughout the country, were nevertheless directed in their intended effect at the activities in Virginia of Virginia residents." *Id.* at 1517. Similarly, in this case the defamatory news announcements by Respondent IAAF, though released in England and Monaco and distributed internationally, were directed in their intended effect at the activities of an Ohio resident. Nonetheless, the Sixth Circuit found that personal jurisdiction could not be exercised in this case.

A further case involving defamatory statements emphasizes the prevailing application of *Keeton* and *Calder* as hinging critically upon the intentional nature of the tortious conduct. In *Burt v. Board of Regents of University of Nebraska*, 757 F.2d 242 (10th Cir. 1985), *vacated on other grounds*, 475 U.S. 1063 (1986), a Colorado resident brought suit against a Nebraska university official for allegedly making defamatory statements about him in a letter that was transmitted to Colorado. Extensively citing both *Keeton* and *Calder*, the Court held:

> Although the libel in *Calder* was pursuant to a commercial enterprise, whereas here the alleged defamation resulted from a single letter, we do not find this distinction significant in view of the Court's repeated emphasis in *Calder* on the intentional nature of the defendants' conduct and its calculated injurious effect in the forum state.

Similarly, in this case the libel resulted from a single press release that was deliberately calculated to damage Petitioner's reputation in Ohio, his State of residence, and worldwide. The distinction between a press release and letter should not be seen as significant, however, in view of *Calder*'s emphasis on the intentional nature of the conduct and the injurious effect it was intended to have and did have on its target in the forum State.

The ruling below thus places the Sixth Circuit at odds with these other courts in its interpretation and application of this Court's decisions in *Keeton* and *Calder*. But the extent of this conflict is shown also by noting that some other decisions appear to align with the ruling below.

In *Madara v. Hall*, 916 F.2d 1510 (11th Cir. 1990), for example, the Eleventh Circuit held that personal jurisdiction could not be maintained under the Due Process Clause against an entertainer who was alleged to have defamed a Florida resident by making statements to a reporter for circulation in a national magazine. The Court essentially held that because the alleged tortfeasor was not himself the publisher of the magazine and did not directly "control its circulation and distribution," he could not be sued in the federal courts in Florida, even though he may have been aware that the magazine with his statements would be circulated there. *Id.* at 1519. This ruling is consistent with the ruling below in this case, but cannot be squared with the decisions described above.

Similarly, in *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482 (9th Cir. 1993), a different panel of the Ninth Circuit found no personal jurisdiction in another libel case, over a strong dissent that would have reached the opposite conclusion by applying *Brainerd*. The case arose from articles published by three Swedish doctors in international

publications on the subject of dental implants. The articles, which were presumed to have been published at the defendant's direction, allegedly defamed the plaintiff, which is the defendant's chief competitor in the world market for dental implants. Suit was brought in federal court in California, where the plaintiff is incorporated. The majority held that there was "purposeful availment" under *Calder*, 465 U.S. at 789, because the alleged libels were intended to cause harm in the forum State and had their most substantial economic effects there. 11 F.3d at 1486-87.[4] Yet the majority went on to conclude that it would be unreasonable to allow the lawsuit to proceed there. The dissent sharply disagreed, noting that personal jurisdiction in this case would comport with the decisions in *Calder* and *Keeton*, as well as with the Ninth Circuit's own earlier rulings in cases such as *Brainerd*. *See id.* at 1492-95.

In short, the ruling below exemplifies and exacerbates an existing conflict among and within the Federal circuit courts. The conflict is over the proper interpretation and application of this Court's decisions in *Keeton* and *Calder* to intentional libels perpetrated by deliberate use of the communications media and other media that are calculated to cause and that do cause direct harm to the plaintiff's reputation in the plaintiff's State of residence. This case

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[4] The existence of libelous conduct that was intentionally and purposefully directed at the plaintiff, with full knowledge that the brunt of its effects would be felt by the plaintiff in his or her State of residence, distinguishes the case at hand, and the cases described in the text, from other cases in which the allegedly libelous comments were made in circumstances that demonstrate no such calculated purpose. *Cf. Wilson v. Belin*, 20 F.3d 644 (5th Cir. 1994) (no jurisdiction found where comments were made in an unsolicited telephone interview); *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201 (1st Cir. 1994) (same).

merits review to address and resolve this continuing decisional conflict.

B. This Circuit Split Is Exacerbated by Numerous Conflicting Decisions by State High Courts.

The ruling below is also at odds with numerous state decisions that interpret *Keeton* and *Calder* to allow personal jurisdiction to be exercised over tortfeasors when their conduct is aimed specifically at a state resident and the harm occurs at least partly within that State, even if other contacts with the State are minor or nonexistent.

In *Krantz v. Air Line Pilots Ass'n Int'l*, 427 S.E.2d 326 (Va. 1993), for example, the plaintiff, a pilot, engaged for a time in a strike against his employer. He later withdrew from the strike and applied for a job with another airline. One of the defendants, another pilot who lived in New York, recorded a message on his personal computer in New York that was derogatory to the plaintiff and then sent it out over a nationwide computer network centered in Virginia. That message generated hundreds of further derogatory comments that prevented the plaintiff from obtaining employment. The Virginia Supreme Court held that the defendant's action taken in New York "was only the beginning of his plan to [harm the plaintiff]. To execute his plan, [the defendant] needed other persons to communicate his message" and intended for them to do so. *Id.* at 328. Thus, although the defendant's only "contact" with the forum State was his single use of a nationwide computer network "as a means of furthering his plan to [harm the defendant,]" that was ruled sufficient to satisfy the Due Process Clause in view of his intentional tortious conduct. *Id.* The same conclusion should have been reached also in this case, where Respondent IAAF purposely availed itself of the international

news media as the means to distribute its defamatory statements into the forum State where they predictably caused serious harm to Petitioner.

Similarly, in *Shaw v. North Am. Title Co.*, 876 P.2d 1291 (Haw. 1994), the plaintiff was a Hawaii resident who was negotiating with various creditors to improve his credit rating. Plaintiff had earlier refinanced a property he owned in California through a California bank that used the services of defendant, a California title insurance company. As a result of that transaction, the defendant had issued several checks payable to the plaintiff's creditors. At the plaintiff's request, however, the checks were sent directly to him. He held those checks for approximately a year before transmitting one of them to a creditor, who dishonored it because in the meantime defendant had transferred its bank account to a different bank. Plaintiff sued, and defendant raised the issue of personal jurisdiction. The Court acknowledged that defendant had not transacted any business in the State of Hawaii. It nonetheless held that personal jurisdiction was proper because the complaint alleged intentional tortious conduct that was calculated to cause injury in the forum State and the effects of which were felt there. *Id.* (applying *Calder*). A similarly strict application of *Calder* would also uphold the District Court's decision to exercise personal jurisdiction over Respondents here.

The conflict in the Federal and state decisions thus creates a quandary for the States and their residents on the issue of when personal jurisdiction can constitutionally be exercised against such intentional tortfeasors. The States' vital interest in protecting their citizens from injury by providing a forum in which they can seek redress may be frustrated, and the protection of their citizens may be jeopardized, because the standards for exercising personal jurisdiction are so uncertain as to be incorrectly and

inconsistently applied. This state of affairs is intolerable, and hence warrants further review in this case.

C. The General Split in the Courts Is Heightened for the State of Ohio and Its Citizens, in Particular, by a Direct Conflict Here Between the Sixth Circuit and the Ohio Supreme Court.

The disagreement among the Federal and state courts is especially acute for the State of Ohio and its citizens, for the Sixth Circuit's ruling in this case is inconsistent with a recent decision by the Ohio Supreme Court on the same issue. The existence of such opposing decisions, if not harmonized by this Court, can only exacerbate general concerns about forum-shopping.

Unlike the court below, the Ohio Supreme Court has broadly construed *Keeton* and *Calder* to conclude that personal jurisdiction is proper whenever "the defendant has intentionally directed his activity at forum residents, ... and the 'effects' of the activity occur in the forum state." *Fallang v. Hickey*, 532 N.E.2d 117 (Ohio 1988) (citing *Burger King* and *Calder*). The Ohio Supreme Court thus squarely adheres to the "effects" test that this Court laid down in *Calder*.

In *Fallang*, the plaintiff alleged that he had been libeled by defendant, a South Carolina resident who had written a letter in South Carolina and mailed it to another individual in Ohio. The Court acknowledged that the defendant's only contact with Ohio was that single letter, but noted that defendant's action was intentional and tortious, and that "any injury to [plaintiff's] reputation has occurred in Ohio." *Id.* at 119. Because "the defendant has intentionally directed his activity at forum residents," and the "effects" of

the activity were felt in the forum State, "a high degree of unfairness is required to erect a constitutional barrier against jurisdiction." *Id.* at 120 (citing *Keeton* and *Calder*). Personal jurisdiction was therefore held to be proper.

Once again, in this case Respondents specifically targeted their intentional tortious conduct at Petitioner, with full knowledge that the brunt of its harmful effects upon Petitioner's reputation would be felt by him within the State of Ohio, where he resides. And in this day and age, there is no principled basis for distinguishing between the deliberate distribution of a press release through the broadcast and communications media and the deliberate distribution of a private letter through the mails, as the First Circuit essentially held in *Hugel*, 886 F.2d at 5. Indeed, for purposes of a defamation action, the former conduct is almost inevitably more intentionally calculated to harm the target's reputation, and is more likely to do so, than the latter. *See also* Pet. App. 39a-40a, 42a ("Indeed, the primary purpose of a press release is to distribute information to the press for publication."). For that reason, a faithful application of the Ohio Supreme Court's decision in *Fallang* would lead to a determination that the Due Process Clause permits the assertion of personal jurisdiction over Respondents in this case.

The existence of conflicting decisions between the Federal Court of Appeals and the highest state court with jurisdiction over the State of Ohio and its citizens presents an entirely sufficient ground for granting certiorari in this case. *See, e.g., Madsen v. Women's Health Center*, 114 S. Ct. 2516, 2522-23 (1994) (writ of certiorari granted to resolve conflict between Eleventh Circuit Court of Appeals and Florida Supreme Court).

CONCLUSION

For the foregoing reasons, as well as those presented by Petitioner, the amici States respectfully request that the Court grant a writ of certiorari in this case to review the decision of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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